

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

In re:

\$ Chapter 11

MARSHALL BROADCASTING
GROUP, INC., 1

Debtor.

\$ Case No. 19-36743 (DRJ)

MARSHALL BROADCASTING GROUP, INC.,

Plaintiff,

v.

NEXSTAR BROADCASTING, INC.,

Defendant.

Adversary No. 20-03074

ORDER GRANTING IN PART NEXSTAR BROADCASTING, INC.'S MOTION FOR ABSTENTION OR, IN THE ALTERNATIVE, TO DISMISS COUNTS II, III, IV, V, VI, VII, AND IX, AND CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS I, II, AND VIII

[Relates to Docket No. 14]

Upon the Motion for Abstention or, in the Alternative, to Dismiss Counts II, III, IV, V, VI, VII, and IX, and Cross Motion for Partial Summary Judgment on Counts I, II, and VIII [Docket No. 14] (the "Motion") filed by Nexstar Broadcasting, Inc., the Response thereto filed by the Debtors at Docket No. 18, and the Reply filed by Nexstar at Docket No. 42; and upon the hearing conducted on the Motion on August 13, 2020 (the "Hearing") and the arguments of counsel thereat,

¹ The last four digits of the Debtor's federal tax identification number are (7805).

and the Motion presenting a core proceeding under 28 U.S.C. § 157(b)(2), it is **HEREBY ORDERED** as follows:

- 1. For the reasons stated on the record at the Hearing, the Motion is granted in part as set forth herein.
- 2. Nexstar's motion for summary judgment on Counts I, II, and VIII contained in the Debtor's Amended Complaint [Docket No. 8] (the "Complaint") is denied.
- 3. Nexstar's motion to dismiss Counts VI, VII, and IX of the Complaint is granted on grounds of comity and is subject to the appeal captioned *Marshall Broadcasting Group, Inc. v. Nexstar Broadcasting, Inc.*, 2019-05156, pending in the Supreme Court of the State of New York, Appellate Division, First Judicial Department (the "New York Appeal") in connection with the action captioned *Marshall Broadcasting Group, Inc. v. Nexstar Broadcasting, Inc.*, Index No. 651943/2019 (N.Y. Sup. Ct. 2019) (the "New York Action").
- 4. Nexstar's motion to dismiss Count III of the Complaint is granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure (as incorporated herein by Rule 7012 of the Federal Rules of Bankruptcy Procedure). Count III is dismissed without prejudice. The Debtor may re-plead Count III by filing a further amended complaint no later than August 21, 2020.
 - 5. All other relief requested by Nexstar in the Motion is denied.
- 6. The Court will conduct a status and scheduling conference on **August 27**, **2020 at 3:00 p.m. Central time** (the "<u>Scheduling Conference</u>"). The parties are ordered to meet and confer in advance of the Status Conference.

7. All parties' rights are preserved to seek further relief from the Court upon a ruling in the New York Appeal, including the right to seek leave to re-assert Counts VI, VII and IX of the Complaint, or the right to seek dismissal of Counts IV, V or VIII of the Complaint.

Signed: August 19, 2020.

DAVID R. JONES UNITED STATES BANKRUPTCY JUDGE

AGREED AS TO FORM:

GRAY REED

By: /s/ Jason S. Brookner
Jason S. Brookner
Texas Bar No. 24033684
Paul D. Moak
Texas Bar No. 00794316
1300 Post Oak Blvd., Suite 2000
Houston, Texas 77056
Telephone: (713) 986-7000
Facsimile: (713) 986-7100

Email: <u>jbrookner@grayreed.com</u> <u>pmoak@grayreed.com</u>

-and

David B. Golubchik (admitted *pro hac vice*) Eve H. Karasik (admitted *pro hac vice*) **LEVENE NEALE BENDER YOO** & BRILL L.L.P.

10250 Constellation Boulevard, Suite 1700 Los Angeles, California 90067

Telephone: (310) 229-1234
Facsimile: (310) 229-1244
Email: dbg@lnbyb.com
ehk@lnbyb.com

COUNSEL TO THE DEBTOR

SELENDY & GAY PLLC

By: /s/ Jennifer M. Selendy
Jennifer M. Selendy (pro hac vice)
David S. Flugman (pro hace vice)
Jessica Underwood (pro hac vice)
1290 Avenue of the Americas
New York, New York, 10104
Telephone: (212) 390-9000
Facsimile: (212) 390-9399
Email: jselendy@selendygay.com

dflugman@selendygay.com junderwood@selendygay.com

COUNSEL TO NEXSTAR BROADCASING, INC.